

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JONATHAN NAUGLES,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:09CV711 CDP
)	
WAYNE-DALTON, INC.,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

Plaintiff, Jonathan Naugles initially filed this case *pro se*. At the Rule 16 conference on August 14, 2009, Naugles informed the court that he had found an attorney to represent him. I therefore did not enter a Case Management Order, preferring to wait until counsel had entered an appearance to set a schedule. Before the conference, defendant had filed a motion for summary judgment. At the conference, I indicated that I would allow additional time for newly retained counsel to file a response to that motion. After the attorney entered his appearance, I set a date for the response.

Instead of responding to the motion for summary judgment, plaintiff's counsel filed a motion to strike that motion, as well as a motion to amend the complaint. The motion to strike argues that it was somehow improper for defendant to file an early motion for summary judgment. This is incorrect.

Defendant had every right to file an early motion for summary judgment, if it believed it was entitled to judgment on plaintiff's complaint. I will deny the motion to strike.

Plaintiff's motion for leave to file an amended complaint did not attach his proposed amended complaint, but I will allow the amendment in the interests of justice. *See* Rule 15(a)(2), Fed. R. Civ. P. Because the pending motion for summary judgment is directed to the original complaint, however, I will deny it as moot, without prejudice to be refiled as defendant deems appropriate.

I will also set a telephone conference to discuss with counsel the schedule for this case. Counsel are expected to confer in advance in an attempt to reach agreement about all necessary case management deadlines.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to file an amended complaint [#25] is granted, and plaintiff must file his amended complaint by **September 21, 2009**.

IT IS FURTHER ORDERED that plaintiff's motion to deny, continue, or strike defendant's motion for summary judgment [#24] is denied.

IT IS FURTHER ORDERED that defendant's motion for summary judgment [#19] is denied as moot without prejudice.

IT IS FURTHER ORDERED that the Court will hold a telephone scheduling conference with both counsel on **Wednesday, September 23, 2009 at 10:00 a.m.** Defendant's counsel is responsible for placing the call and having all necessary parties on the line before calling the Court at (314)244-7520. Counsel shall meet and confer in advance of the telephone conference and attempt to reach agreement about all necessary scheduling deadlines.

A handwritten signature in cursive script, reading "Catherine D. Perry", is written over a horizontal line.

CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 9th day of September, 2009.